

FEB - 6 2008

**FEDERAL ELECTION COMMISSION**

**999 E Street NW  
Washington, DC 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

**MUR 5694**

**DATE FILED: Dec. 8, 2005**

**DATE OF NOTIFICATION: Dec. 13, 2005**

**LAST RESPONSE REC'D: Jan. 30, 2006**

**DATE ACTIVATED: May 24, 2006**

**EXPIRATION OF SOL: Sept. 2010**

**MUR 5910**

**DATE FILED: April 11, 2007**

**DATE OF NOTIFICATION: April 26, 2007**

**LAST RESPONSE REC'D: July 2, 2007**

**DATE ACTIVATED: June 4, 2007**

**EXPIRATION OF SOL: Oct. 1, 2004 – Oct. 31, 2011<sup>1</sup>**

**COMPLAINANTS:**

**Jay Reiff and Kathy Chan of Bob Casey for  
Pennsylvania Committee (MUR 5694)**

**Laura MacCleery, Taylor Lincoln and Craig Holman of  
Public Citizen (MUR 5910)**

**RESPONDENTS:**

**Americans for Job Security, Inc.**

**Michael Dubke, President (MUR 5694 only)**

**Fred Maas, Secretary and Treasurer (MUR 5694 only)**

**RELEVANT STATUTES:**

**2 U.S.C. § 431(4), (9), (17)**

**2 U.S.C. § 433**

**2 U.S.C. § 434**

**2 U.S.C. § 441a**

**2 U.S.C. § 441b**

**2 U.S.C. § 441d**

<sup>1</sup> The complaint in MUR 5910 alleged that "[t]hese violations have occurred at least since 1998," which would normally indicate a statute of limitations period commencing in 2003. Complaint at 1. However, the complaint contains no facts concerning any 1998 activity, and it later alleges that Americans for Job Security, Inc. ("AJS") engaged in influencing elections from 1999, presumably referring to AJS ads that started running in October 1999. *Id.*, Att. at 4, 7, 9, 62-63. Accordingly, we have listed a statute of limitations period commencing in October 2004. Out of over sixty advertisements paid for by AJS for which we have obtained copies or other content information, seventeen appear to have been disseminated prior to the five-year statute of limitations period.

11 C.F.R. § 100.22

INTERNAL REPORTS CHECKED: Disclosure Reports

EXTERNAL REPORTS CHECKED: Internal Revenue Service

**I. INTRODUCTION**

The complaints in these matters allege, *inter alia*, that Americans for Job Security ("AJS"), which claims to be an incorporated, nonprofit trade association organized under section 501(c)(6) of the Internal Revenue Code, has made illegal corporate expenditures and failed to register as a political committee with the Commission and disclose its contributions and expenditures as required by the Federal Election Campaign Act of 1971, as amended ("the Act"). Based on the complaints and responses, as well as our review of publicly available information, we recommend that the Commission find reason to believe that AJS violated 2 U.S.C. §§ 433, 434, 441b, 441a(f) and 441d by failing to register as a political committee with the Commission, failing to report contributions and expenditures, knowingly accepting corporate contributions and contributions in excess of \$5,000, and by failing to include proper disclaimers on political advertising. Alternatively, we recommend that the Commission find reason to believe that AJS's spending on express advocacy ads constituted corporate expenditures in violation of 2 U.S.C. § 441b, and that AJS failed to include proper disclaimers on the ads in violation of 2 U.S.C. § 441d.

**II. FACTUAL BACKGROUND**

AJS, which responded separately to each complaint (incorporating its initial response "by reference" into its subsequent response), describes itself as an "association of businesses, business leaders, and entrepreneurs that believe a strong job-creating economy in which workers have job security and improved job opportunities is essential for a healthy and

10044273656

prosperous business environment.” MUR 5694/5910 Responses, Affidavit of (AJS President) Michael D. Dubke (“Dubke Aff.”), ¶ 6. On its 2004 Form 990 (AJS’s most recently available tax return), AJS states that its “primary exempt purpose” is “educating the public on economic issues with a pro-market, pro-paycheck message.”

The complaint in MUR 5694 primarily alleges that AJS has as its major purpose the election or defeat of candidates for federal office, and, because it has spent or received more than \$1,000 to influence federal elections, it must register as a political committee and disclose its receipts and disbursements. *See* 2 U.S.C. §§ 433 and 434. The complaint focuses on only two television ads – both also addressed in the MUR 5910 Complaint – that aired in Pennsylvania in 2005 and identified then-Senator Rick Santorum. The complaint claims that the ads constituted prohibited corporate expenditures because they contained express advocacy under 11 C.F.R. §§ 100.22(a) and (b).<sup>2</sup> The complaint also states that, “[b]ecause AJS is a political committee,” its ads must comply with the Act’s disclaimer requirements. MUR 5694 Complaint at 6. The two ads stated that they were paid for by AJS but contained no other information, such as an address and a spoken and written statement of responsibility. *See* 2 U.S.C. § 441d(a)(3), (d)(2).

The complaint in MUR 5910 makes similar allegations regarding AJS’s spending and major purpose.<sup>3</sup> It asserts that AJS has spent at least \$17.3 million on political ads from 2000 through 2004, most of which allegedly contain express advocacy under the Commission’s

<sup>2</sup> The complaint mistakenly references section 100.24 instead of section 100.22.

<sup>3</sup> Some of the materials attached to the MUR 5910 Complaint are styled as a complaint to the U.S. Internal Revenue Service, which is also publicly available on Public Citizen’s website. <http://www.citizen.org/documents/AJS%20Complaint.pdf>. Complainant states that “[t]his research originally was prepared as a complaint to the . . . IRS documenting the organization’s likely violation of its 501(c)(3) non-profit tax status . . . .” MUR 5910 Complaint at 2.

1 regulations, thereby qualifying as expenditures under the Act. Based on its 2003 and 2004  
2 tax returns, AJS spent over \$7 million from Nov. 1, 2003 through Oct. 31, 2005, comprised  
3 of large disbursements for media placement, postage and consultants. It received over \$8  
4 million in revenue during this same period, almost all of which it listed on its tax returns as  
5 membership dues and assessments.

6 The complaint identifies thirty-two of AJS's television, radio, telephone and print  
7 communications since the 2000 election cycle (seventeen federal candidates identified in  
8 thirty communications; one non-federal candidate identified in two communications), noting  
9 that all of the advertisements identified candidates for elective office and aired shortly before  
10 those elections. At least ninety-four percent of the communications allegedly targeted the  
11 candidate's voting constituency and none identified specific legislation or were aired when  
12 pertinent public policies were being considered in Congress. According to the complaint,  
13 press reports suggest that AJS obtained its funding from corporate contributors as well as  
14 contributions from individuals in excess of \$5,000, in violation of 2 U.S.C. §§ 441a and  
15 441b.<sup>4</sup>

16 AJS claims that it does not advocate the election or defeat of any federal candidates  
17 under either 11 C.F.R. § 100.22(a) or (b).<sup>5</sup> Rather, it asserts that each of its communications  
18 identified specific governmental or legislative issues pending before the appropriate  
19 governmental branch or agency or that pertained to the referenced individual. In addition,  
20 AJS claims that each communication contained "an explicit request that the public contact

<sup>4</sup> Several news articles reportedly identifying some of AJS's corporate contributors are referenced on a website sponsored by the Complainant. See <[http://www.stealthpacs.org/funder.cfm?Org\\_ID=41](http://www.stealthpacs.org/funder.cfm?Org_ID=41)>.

<sup>5</sup> Following the Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. \_\_\_, 127 S.Ct. 2652 (2007) ("*WRTL*"), AJS submitted a supplementary response claiming that the decision provides additional support for its arguments that the ads at issue did not constitute express advocacy under 11 C.F.R. § 100.22.

1 the identified public official or public figure concerning the issues discussed . . . .”

2 MUR 5910 Response at 12.<sup>6</sup>

3 AJS also points out that the complaint does not allege that it received any  
4 contributions as a result of communications with members or potential members under *FEC*  
5 *v. Survival Education Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995) (“*Survival Education Fund*”) or  
6 11 C.F.R. § 100.57 (2005) (funds received by an organization considered contributions if in  
7 response to communication indicating that “any portion of the funds received will be used to  
8 support or oppose the election of a clearly identified Federal candidate”). Finally, AJS  
9 asserts that its major purpose is not election activity, but rather, consistent with its 501(c)(6)  
10 tax status, its “major purpose is to advance the common business interests of its members by  
11 publicizing pro-business and economic expansion public policy issues . . . .” MUR 5910  
12 Response at 47.

13 **III. LEGAL ANALYSIS**

14 AJS may be a “political committee” subject to the contribution limitations, source  
15 prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. §§ 431(4)(A), 433, 434,  
16 441a, and 441b. The Act defines a “political committee” as any committee, club,  
17 association, or other group of persons that receives “contributions” or makes “expenditures”  
18 for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a  
19 calendar year. 2 U.S.C. § 431(4)(A). To address overbreadth concerns, the Supreme Court  
20 has held that only organizations whose major purpose is campaign activity can potentially

---

<sup>6</sup> AJS separately addresses all communications referenced in the complaints that were disseminated from 2002 through 2006, submitting various supporting materials concerning each communication (e.g., legislation it claims was related to the particular issues raised). MUR 5910 Response at 17-44. AJS provided transcripts of sixteen public communications it disseminated in 2004 and 2005 (mailers, radio and television ads), two of which were included in complaints.

10044273669

1 qualify as political committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79  
2 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The  
3 Commission has long applied the Court's major purpose test in determining whether an  
4 organization is a "political committee" under the Act, and it interprets that test as limited to  
5 organizations whose major purpose is federal campaign activity. *See* Political Committee  
6 Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7,  
7 2007) ("Supplemental E&J"); *see also* FEC's Mem. in Support of Its Second Mot. for  
8 Summ. J., *Emily's List v. FEC*, Civ. No. 05-0049 at 21 (D.D.C. Oct. 9, 2007).

9 The Commission has previously found that a similar non-profit organization was a  
10 political committee under the Act. *See* MUR 5492 (Freedom, Inc.) (purported 501(c)(4)  
11 organization actually a political committee). Similarly, "section 527" tax status has been  
12 found to be relevant, but not dispositive, to a determination that organizations were political  
13 committees. *See, e.g.,* MURs 5511 and 5525 (Swift Boat Veterans), MUR 5753 (League of  
14 Conservation Voters) and MUR 5754 (MoveOn.org Voter Fund). Thus, the mere fact that  
15 AJS purports to have 501(c)(6) tax status does not preclude the Commission from  
16 determining that it is a political committee under the Act.

17 During the 2004 election cycle, the Commission concluded there was reason to  
18 investigate whether various organizations had triggered political committee status when the  
19 available information demonstrated that the objective of a group was to influence a federal  
20 election and the group raised and spent substantial sums of money in furtherance of that  
21 objective. In such instances, the Commission concluded it was appropriate to investigate  
22 whether, among those funds spent and received, the groups had made \$1,000 in  
23 "expenditures" or received \$1,000 in "contributions." *See, e.g.,* MURs 5577 and 5620

10044273670

(National Association of Realtors – 527 Fund). The term “expenditure” is defined to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal Office.” 2 U.S.C. § 431(9)(A)(i).

However, for matters arising out of the 2006 election cycle, the Commission has indicated that, due to developments in the law, including the distillation of the meaning of “expenditure” through the enforcement process and the promulgation of 11 C.F.R. § 100.57 addressing contributions, it will now require that there be some information suggesting a specific expenditure was made or a contribution received prior to authorizing an investigation. See Executive Session discussion of September 11, 2007 concerning MUR 5842 (Economic Freedom Fund).

**A. AJS May Have Exceeded the Statutory Threshold for Expenditures by Spending Over \$1,000 For Communications Expressly Advocating the Election or Defeat of a Clearly Identified Candidate**

In determining whether an organization makes an expenditure, the Commission “analyzes whether expenditures for any of an organization’s communications made independently of a candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b).” Supplemental E&J, 72 Fed. Reg. at 5606. Under the Commission’s regulations, a communication contains express advocacy when it uses phrases such as “vote for the President,” “re-elect your Congressman,” or “Smith for Congress,” or uses campaign slogans or words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that say, “Nixon’s the One,” “Carter ‘76,” “Reagan/Bush,” or “Mondale!” See 11 C.F.R. § 100.22(a); see also MCFL,

10044273671

1 479 U.S. at 249 (“[The publication] provides in effect an explicit directive: vote for these  
2 (named) candidates. The fact that this message is marginally less direct than “Vote for  
3 Smith” does not change its essential nature.”). Courts have held that “express advocacy also  
4 includes verbs that exhort one to campaign for, or contribute to, a clearly identified  
5 candidate.” *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 62 (D.D.C. 1999) (explaining  
6 why *Buckley*, 424 U.S. at 44, n.52, included the word “support,” in addition to “vote for” or  
7 “elect,” on its list of examples of express advocacy communication).

8 The Commission’s regulations further provide that express advocacy includes  
9 communications containing an “electoral portion” that is “unmistakable, unambiguous, and  
10 suggestive of only one meaning” and about which “reasonable minds could not differ as to  
11 whether it encourages actions to elect or defeat” a candidate when taken as a whole and with  
12 limited reference to external events, such as the proximity to the election. *See* 11 C.F.R.  
13 § 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission  
14 stated that “communications discussing or commenting on a candidate’s character,  
15 qualifications or accomplishments are considered express advocacy under new section  
16 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to  
17 elect or defeat the candidate in question.” *See* 60 Fed. Reg. 35292, 35295 (1995).<sup>7</sup>

---

<sup>7</sup> In *WRTL*, the U.S. Supreme Court held that “an ad is the functional equivalent of express advocacy,” and thus subject to the ban against corporate funding of electioneering communications, “only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Id.*, 127 S.Ct. at 2667. Although 11 C.F.R. § 100.22 was not at issue in the matter, the Court’s analysis included examining whether the ad had “indicia of express advocacy” such as the “mention [of] an election, candidacy, political party, or challenger” or whether it “take[s] a position on a candidate’s character, qualifications, or fitness for office.” *Id.* The Commission subsequently incorporated the principles set forth in the *WRTL* opinion into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. *See* Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).



1 In these matters, we believe we have obtained copies or transcripts of most, but not  
2 all, of the advertisements disseminated by AJS during the past five years.<sup>8</sup> In applying the  
3 appropriate standards to approximately fifty AJS communications disseminated during the  
4 2004 and 2006 election cycles, it appears that certain ads constituted express advocacy and  
5 that the expenditures for them exceeded the \$1,000 political committee statutory threshold in  
6 both 2004 and 2006. See 2 U.S.C. § 431(4)(A).

7 1. AJS Communications During the 2004 Election Cycle

8 The communications publicly disseminated by AJS during the 2004 election cycle  
9 typically referred to actions or positions taken by federal candidates regarding particular  
10 issues or legislation.<sup>9</sup> While the majority of the communications do not appear to contain  
11 express advocacy under either 11 C.F.R. § 100.22(a) or (b)<sup>10</sup>, at least two television

---

<sup>8</sup> We reviewed, for example, the publicly available ad archives on National Journal's "Ad Spotlight," accessible at <<http://nationaljournal.com/members/adspotlight>>, as well as articles about AJS's advertising that we uncovered in Westlaw and Lexis news databases. In addition, the complainant in MUR 5910 states that its complaint "analyzes all television and print communications by AJS that were obtainable from the University of Wisconsin Advertising Project database and radio and direct mail advertisements in which Public Citizen was able to obtain a transcript or copy of the ads." MUR 5910 Complaint at 2. For ads that we were unable to obtain copies or transcripts, we have provided available content and timing information *infra* as appropriate, along with the source of our information.

<sup>9</sup> Four AJS communications in our possession from 2004 do not identify federal candidates. Two of these communications reference a non-federal candidate, see MUR 5910 Complaint, Att. at 51-54, and two others identify a U.S. Senator who had announced his retirement in 2003 and was not a candidate for any federal office in 2004. See MUR 5694 Response at Att. 5.

<sup>10</sup> For example, a direct mail piece disseminated by AJS in 2004 contained the following text:

John Kerry voted against a comprehensive prescription drug benefit making prescription drugs more affordable and accessible to seniors.

But it gets worse.

Kerry wants to repeal the prescription drug benefits seniors now receive. Kerry's prescription for failure:

- Fewer choices
- More government
- More paperwork
- Higher costs.

(footnote continued on next page)

10044273673

1 advertisements aired by AJS in 2004 may qualify as express advocacy under 11 C.F.R.  
2 § 100.22(b).

3 First, six weeks prior to the U.S. Senate primary election in North Carolina, AJS  
4 broadcast the following ad in that state referencing then-U.S. Senate candidate Richard Burr:

5 [Narrator:] What will it take to get North Carolina moving? Experience.  
6 Leadership. Richard Burr. In Congress, Burr fought to keep jobs here,  
7 while attracting new businesses. He blocked unfair trade practices seven  
8 times, voting against giving China special trade status. A small  
9 businessman for 17 years, Burr has the leadership required to protect jobs  
10 of our working families. Call Richard Burr. Tell him thanks for being a  
11 conservative, common sense voice for North Carolina.  
12

13 MUR 5910 Complaint, Att. at 48; MUR 5910 Response at 34.<sup>11</sup> At the end of the  
14 advertisement, the phone number for Burr's North Carolina office appears on the screen  
15 along with the disclaimer "Paid for By Americans for Job Security." *Id.*

16 Although the ad does not contain words or "in effect" explicit directives that urge the  
17 viewer to vote for Burr, *see* 11 C.F.R. § 100.22(a), it appears to satisfy the express advocacy  
18 standard set forth at 11 C.F.R. § 100.22(b) because of its emphasis on Burr's character  
19 ("Leadership;" "common sense voice for North Carolina"), his qualifications ("Experience;"

---

Call Senator Kerry at (202) 224-2742 and let him know that American Seniors deserve better.

MUR 5910 Complaint, Att. at 45; MUR 5910 Response at 30.

The mailer does not constitute express advocacy under 11 C.F.R. § 100.22(a) because it does not contain any so-called "magic words" nor any slogans or individual words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. The ad also falls short under Section 100.22(b) because there no obvious electoral portion and the only action urged is to call Senator Kerry's congressional office in Washington, D.C. regarding a specific legislative issue that was the subject of a number of bills being considered in Congress. The mailer could be reasonably interpreted as encouraging recipients of the mailer to lobby Senator Kerry in his position as an incumbent officeholder. *See also* MUR 5910 Complaint, Att. at 44, 46-47 (transcripts of similar communications by AJS).

<sup>11</sup> This ad reportedly cost \$500,000. *See* Jennifer Strom, "The Companies He Keeps," *The (NC) Independent Weekly*, July 7, 2004 (for each ad referenced in this Report, we have footnoted any available cost information). Most of the ads referenced in the complaints and responses from the 2004 and 2006 election cycles are publicly available on National Journal's "Ad Spotlight," accessible at <<http://nationaljournal.com/members/adspotlight>>.

10044273674

1 "has the leadership required") and his accomplishments ("A small businessman for  
2 17 years"). In comparison, the ad presents job-related issues in a somewhat cursory manner  
3 and does not call on Burr to take any particular action.

4 AJS asserts that "the communication may be interpreted as a request to contact then-  
5 Congressman Burr to inquire about his positions on these issues," and notes that the ad "does  
6 not refer to . . . Burr as a candidate, reference an election, or exhort the public to campaign  
7 for or contribute to a federal candidate." MUR 5910 Response at 34. However, rather than  
8 urging the viewer to contact Burr regarding particular issues, AJS encourages viewers to  
9 "Tell [Burr] thanks" in connection with his overall record as "conservative, common sense  
10 voice . . . ." The ad's focus on Burr using his experience and leadership "to get North  
11 Carolina moving" and "to protect jobs" suggests that he will push for those objectives if  
12 elected to the U.S. Senate. When taken as a whole and with limited reference to external  
13 events, including timing, this communication arguably constitutes express advocacy under  
14 11 C.F.R. § 100.22(b) because it is subject to no other reasonable interpretation than to vote  
15 for Burr.<sup>12</sup>

---

<sup>12</sup> Although the Commission's express advocacy regulation was not at issue in *WRTL*, the Court's consideration of what could be regulated as an electioneering communication set forth a test that included elements similar to those used in 11 C.F.R. § 100.22(b). While the *WRTL* test is not applicable here, the four ads discussed in the text would meet the Court's test, if the other qualifying factors were met, for regulable electioneering communications. The ads contain, to varying degrees, the "indicia of express advocacy" discussed in *WRTL*, such as the discussion of "a candidate's character, qualifications, or fitness for office." *WRTL*, 127 S.Ct. at 2667. Further, the ads do not direct the reader to take action to express a view on a public policy issue or urge the reader to contact public officials with respect to the issue. In sum, the ads are susceptible of no reasonable interpretation other than as an appeal to vote for or against a particular candidate.

1 Second, AJS aired the following television ad in 2004 in Alaska approximately six  
2 weeks before the primary election, in which former Governor Tony Knowles was running for  
3 the U.S. Senate seat:<sup>13</sup>

4 (On screen: Cindy Norquest; Anchorage)

5 CINDY NORQUEST: When Tony Knowles was governor, I had a great  
6 many friends that chose to leave Alaska.

7 (On screen: Under Tony Knowles, Alaska had the lowest economic  
8 growth of any state)

9 They didn't actually choose -- they had to leave Alaska, because there  
10 weren't opportunities here.

11 (On screen: Roy Eckert; Ketchikan)

12 ROY ECKERT: You can't just drive to the next town to find work.

13 (On screen: 2001 study showed a sharp increase in young Alaskans  
14 leaving to find work.)

15 You'd have to literally leave your home; there's nowhere else to go.

16 (On screen: Neil MacKinnon; Juneau)

17 NEIL MACKINNON: Probably Alaska's greatest export is our children  
18 searching for jobs.

19 (On screen: Paul Axelson; Ketchikan)

20 PAUL AXELSON: You know, if you don't have a living-wage job, then  
21 you have no option but to leave the community.

22 (On screen: Alaska had the highest unemployment rate in the country  
23 under Tony Knowles)

24 CINDY NORQUEST: Tony Knowles may think flipping burgers is a good  
25 job, but it's not the future I want for my daughters.

26 (On screen: Ask Tony Knowles his plans to bring our children back to  
27 Alaska; Paid for by Americans for Job Security.)

28  
29 AJS asserts that, when it aired this communication, Alaska was facing an  
30 unemployment crisis and that the "lack of jobs was causing young adults to leave the state in  
31 search of employment opportunities elsewhere. This in turn negatively impacted the small  
32 business community in the state." MUR 5910 Response at 28. AJS states that the  
33 "communication specifically requests that the viewer contact Governor Knowles to discuss  
34 these issues." *Id.*

<sup>13</sup> We have used the text from <http://nationaljournal.com/members/adspotlight> because it contains more detailed information than the ad text included in the MUR 5910 Complaint. The ad reportedly cost \$68,000. See Nicole Tsong, "Knowles Won Senate Fundraising Race," Anchorage (AK) Daily News, March 27, 2005.

1           However, Tony Knowles served as Governor of Alaska from December 1994 through  
2   December 2002, and was barred by Alaska law from seeking a third consecutive term in  
3   2002. At the time the above ad was broadcast in Alaska in July 2004, Knowles had not  
4   served as Governor in over a year and a half and had been a candidate for U.S. Senate for  
5   approximately one year. Since Knowles was not a public official at the time, he would not  
6   be in a position to influence economic policies impacting Alaskans. In this context, asking  
7   Knowles about "his plans to bring our children back to Alaska" would be construed as asking  
8   him what his policies would be if elected to the U.S. Senate. In addition, unlike most of its  
9   other ads, AJS does not appear to have included a phone number or point of contact for  
10   viewers to reach Knowles. Under these circumstances, where the ad makes little sense  
11   outside of an electoral context, it is arguably subject to no other reasonable interpretation  
12   than to vote against Knowles. *See* 11 C.F.R. § 100.22(b).

13           Accordingly, it appears that AJS made expenditures in excess of \$1,000 in 2004. *See*  
14   2 U.S.C. § 431(4)(A).

15           2.    **AJS Communications During the 2006 Election Cycle**

16           At least two AJS television ads (cited only in the MUR 5910 Complaint) referencing  
17   2006 U.S. Senate candidate Bob Casey may satisfy the express advocacy definition at  
18   11 C.F.R. § 100.22(b).<sup>14</sup> At the time the ads were run, Casey was either a candidate in the

---

<sup>14</sup> MUR 5694 focuses on two other 2006 cycle ads that were also cited in MUR 5910 ("Moms" and "Grandkids" – *see* Attachments 1-2), but neither ad appears to contain express advocacy. The ads do not qualify under 11 C.F.R. § 100.22(a) because they do not contain any so-called "magic words" such as "Santorum for U.S. Senate" nor any slogans or individual words that in context have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. These ads would also appear to fall short of the standard at 11 C.F.R. § 100.22(b). Not only is there no obvious electoral portion, but the action urged is simply to call Senator Santorum's office and express thanks for his actions, which can in turn be construed as an effort to encourage Santorum to maintain his positions on the specific legislative issues identified in the ads.

1 May 16, 2004 Senatorial primary election, or he had won that election and was then-Senator  
2 Rick Santorum's challenger in the general election.

3 The ad entitled "Serious Times" was run beginning on April 4, 2006, approximately a  
4 month and a half before the Pennsylvania primary election.<sup>15</sup> The ad stated, "These are  
5 serious times that call for serious leadership," noting that Casey missed work more than 43%  
6 of the time because he was "look[ing] for another job," an apparent reference to his running  
7 in the primary election for federal office. Attachment 3. The ad further stated, "With a  
8 record like that can we really count on Bob Casey to be there for us when it matters most?  
9 Call Bob Casey, tell him we need serious leaders in serious times." The ad then listed the  
10 phone number for the office where Casey was employed as Pennsylvania's state treasurer.  
11 *Id.* AJS argues, *inter alia*, that the "plain language" of the ad does not refer to Casey as a  
12 candidate, and that the ad "may be interpreted as a request to contact State Treasurer Casey  
13 to inquire about his positions" pertaining to employment and government ethics issues.  
14 MUR 5910 Response at 41.

15 A similar ad – "Dedication" – was run beginning on June 3, 2006, two weeks after  
16 Casey won the primary election.<sup>16</sup> The ad states that "[d]oing a good job requires  
17 dedication," and again discusses Casey skipping work to look for another job. Attachment 4.  
18 The ad continues, "If you miss that much work, would you keep your job? Call Bob Casey  
19 and tell him we expect an honest day's work for an honest day's pay." The ad again lists the

---

<sup>15</sup> The ad was broadcast on network television in Harrisburg and Philadelphia and on cable statewide, and reportedly cost \$500,000. See National Journal Ad Spotlight, 2006 Political Ads: Pennsylvania Senate, "Serious Times," April 5, 2006, available at <http://nationaljournal.com/members/adspotlight/2006/04/0405pasen1.htm>.

<sup>16</sup> This ad ran on cable statewide and on network broadcast television in Pittsburgh, reportedly for a cost of approximately \$125,000 to \$150,000. See National Journal Ad Spotlight, 2006 Political Ads: Pennsylvania Senate, "Dedication," June 3, 2006, available at <http://nationaljournal.com/members/adspotlight/2006/06/0605pasen1.htm>.

1 phone number for Casey's state office. *Id.* AJS claims that the "plain language" of the ad  
2 does not refer to Casey as a candidate, and asserts that the "wasting of taxpayer funds to  
3 subsidize an individual who is pursuing activities unrelated to his current job is a serious  
4 issue for the business community – an issue State Treasurer Casey was in a position to  
5 affect." MUR 5910 Response at 40.

6 The "Serious Times" and "Dedication" ads may contain express advocacy under  
7 section 100.22(b). Because the "Serious Times" questioned Casey's leadership potential and  
8 included an apparent reference to the election by noting that he was "look[ing] for another  
9 job," a viewer would reasonably interpret this ad as urging a vote against Casey. A viewer  
10 would reasonably interpret the "Dedication" ad in a similar manner, since it began running  
11 after Casey secured his party's nomination and also informed the viewer that he was  
12 "look[ing] for another job." Accordingly, it appears that AJS made expenditures in excess of  
13 \$1,000 in 2006.

14 **B. AJS's Major Purpose Appears to Have Been Federal Campaign Activity**

15 The facts obtained from the complaints, responses and publicly available information  
16 suggest that a primary objective of AJS was to influence federal elections. With the  
17 exception of only a few communications, the advertisements in our possession identify  
18 federal candidates. Although we do not know the full scope of AJS's disbursements, it  
19 appears that a large portion of its advertising budget was allocated to television, radio and  
20 print advertisements that clearly identified candidates for U.S. Senate.<sup>17</sup> The available

---

<sup>17</sup> See discussion of AJS's tax returns at 3–4, *supra*. The MUR 5910 Complaint alleges that, in 2004, AJS spent \$3.8 million on media out of a total of \$6 million, and that, since 2000, 78% of AJS's budget has been allocated "to the political advertising campaign." MUR 5910 Complaint at 3. AJS did not respond to these allegations or provide any information concerning its budget.

1 information indicates that most of these ads were broadcast or disseminated in the states or  
2 districts where the candidates were running for office, often in close proximity to the relevant  
3 primary or general election. However, because we do not have copies of all of AJS's ads at  
4 this time and we have limited information as to how AJS spent its funds, an investigation is  
5 warranted to determine the extent to which AJS made expenditures under the Act. Moreover,  
6 we do not have any information about how AJS solicited funds (AJS did not address this  
7 issue in its responses); accordingly, an investigation into whether AJS solicited contributions  
8 meeting the standard as set forth in section 100.57 is warranted.

9 C. AJS Appears to Have Made Corporate Expenditures in the Form of  
10 Express Advocacy Communications  
11

12 Alternatively, if AJS is viewed not as a political committee but as a corporation under  
13 the Act, then its spending on express advocacy communications appears to have violated the  
14 Act's prohibition on corporate expenditures in connection with federal elections. See  
15 2 U.S.C. § 441b(a).<sup>18</sup>

16 D. Other Respondents

17 The remaining Respondents include AJS President Michael Dubke and Fred Maas,  
18 who was identified in the MUR 5694 Complaint as AJS's Secretary and Treasurer.<sup>19</sup>  
19 Consistent with the treatment of similarly situated officers of 527 organizations in matters

---

<sup>18</sup> There are no allegations of coordination in the complaints and we have obtained no information indicating the expenditures were coordinated. An attachment to the MUR 5910 complaint notes the "close relationships" between AJS and some of the candidates for U.S. Senate in states where AJS ran ads referencing those candidates' opponents. See MUR 5910 Complaint, Att. at 10-11. However, rather than alleging that AJS coordinated the advertisements with those Senate campaigns, the complaint asserts that such information, e.g., "further supports the conclusion that [AJS] is primarily concerned with affecting the prospects of candidacies rather than the outcomes of issues." *Id.* at 10.

<sup>19</sup> Fred Maas appears to have been named as a respondent in the MUR 5694 Complaint because of his purported status as secretary and treasurer of Americans for Job Security, Inc. However, AJS has stated that Jean Cottingham is the secretary and treasurer, and a recent filing with the Virginia State Corporation Commission identifies Art Hackney as "Sec/Treas" for AJS. See <<http://s0302.vita.virginia.gov>>.



1 from the 2004 election cycle, we plan to gather more information before making any  
2 substantive recommendations regarding them. See, e.g., MUR 5511 and 5525 (Swift Boat  
3 Veterans), First General Counsel's Report. Therefore, we recommend that the Commission  
4 take no action at this time as to these Respondents.

5 **IV. CONCLUSION**

6 For all the foregoing reasons, we recommend that the Commission find reason to  
7 believe that AJS violated 2 U.S.C. §§ 433, 434, 441b and 441a(f) by failing to register as a  
8 political committee with the Commission, by failing to report contributions and expenditures,  
9 and by knowingly accepting prohibited contributions and contributions in excess of \$5,000;  
10 and take no action at this time as to Michael Dubke and Fred Maas.

11 Regarding the disclaimer allegation, although the advertisements generally stated that  
12 they were "Paid for by Americans for Job Security," they failed to include address  
13 information, non-authorization statements and, in the case of television and radio ads,  
14 statements of responsibility. See 2 U.S.C. § 441d(a)(3), (d)(2). Accordingly, we recommend  
15 that the Commission find reason to believe that AJS violated 2 U.S.C. § 441d by failing to  
16 include proper disclaimers on public political advertising it paid for as a political committee.

17 Alternatively, we recommend that the Commission find reason to believe that AJS, as  
18 a corporation, made prohibited expenditures in violation of 2 U.S.C. § 441b, and failed to  
19 include proper disclaimers on express advocacy communications in violation of 2 U.S.C.  
20 § 441d.

21 **V. PROPOSED DISCOVERY**

22 We seek authorization to issue subpoenas for answers to written questions, production  
23 of documents, and depositions directed to representatives of AJS and witnesses in this matter.

10044273681

1  
2  
3  
4  
5  
6  
7 Accordingly, we request that the Commission authorize the use of compulsory  
8 process, including the issuance of appropriate interrogatories, document subpoenas, and  
9 deposition subpoenas, as necessary.

10 **VI. RECOMMENDATIONS**  
11

1. Find reason to believe that American for Job Security violated 2 U.S.C. §§ 433, 434, 441b, 441a(f) and 441d by failing to register as a political committee with the Commission, by failing to report contributions and expenditures, by knowingly accepting prohibited contributions and contributions in excess of \$5,000 and by failing to include proper disclaimers on its public political advertising;
2. Find reason to believe that Americans for Job Security violated 2 U.S.C. §§ 441b and 441d by making expenditures for express advocacy communications and by failing to include proper disclaimers on them;
3. Take no action at this time as to Michael Dubke and Fred Maas;
4. Approve the attached Factual and Legal Analysis;
5. Authorize the use of compulsory process with respect to all respondents and witnesses, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary;

10044273682

6. Approve the appropriate letters.

2/6/2008  
Date

Thomasenia P. Duncan  
Thomasenia P. Duncan  
General Counsel

Kathleen M. Guith  
Kathleen M. Guith  
Acting Associate General Counsel  
for Enforcement

Mark D. Shonkwiler  
Mark D. Shonkwiler  
Acting Deputy Associate General Counsel  
for Enforcement

Sidney Locke  
Sidney Locke  
Assistant General Counsel

Thomas J. Andersen  
Thomas J. Andersen  
Attorney

Attachments:

- 1 "Moms" a/k/a "Record" (November 2005) television ad
- 2 "Grandkids" (November 2005) television ad
- 3 "Serious Times" (April 2006) television ad
- 4 "Dedication" (June 2006) television ad

2006 POLITICAL ADS: PENNSYLVANIA SENATE

**Americans For Job Security: "Record"**

Published Tuesday, Nov. 22, 2005

Producer: Stevens and Schriefer

Running Time: 0:30

Debut Date: Nov. 18, 2005

Ad Buy: statewide in all  
Pennsylvania markets except  
Philadelphia

Cost: \$500,000

Summary: The ad credits Santorum  
with "getting things done everyday."

- More About This Ad
- More Ads From This Race

To access the ad, you will need a current version of RealPlayer™,  
which is available for free from the Progressive Networks Web site

Script of "Record" (TV)

**ANNOUNCER** [v/o]: Most Saturdays they get together in the park, 8 a.m. sharp.

Pennsylvania families relax a little more these days because Rick Santorum is getting things done everyday.

Over \$300 billion in tax relief, eliminating the marriage penalty, increasing the per child tax credit -- all done.

And now Rick Santorum is fighting to eliminate unfair taxes on family businesses.

Call and say thanks because Rick Santorum is the one getting it done.

*(Text on screen: Senator Rick Santorum; (717) 231-7540; Paid For By Americans for Job Security)*

[ Ad Spotlight Main Page ]

**Need A Reprint?**

National Journal Group offers both print and electronic reprint services, as well as permissions for academic use, photocopying and republication. Click here to order, or call us at 877-394-7350.

ADVERTISEMENT

10044273685

**“Grandkids”**

Script

These days, Edgar's afternoons are reserved for grandkids.

Video

Film:

A grandfather runs with his grandson in a park.

Graphic:

"[Tuesday 3:30 p.m.]"

Support

No support needed.

2  
2  
8

Script

Like thousands of Pennsylvania seniors, he's enjoying retirement.

Because Rick Santorum's protecting his Social Security.

Video

Film:

Grandfather walks with his grandson down a path in a park.

Graphic:

"Rick Santorum"

Support

According to Social Security Administration statistics, the Federal Government paid Social Security benefits to approximately 1.5 million Pennsylvania retirees in 2003. See State Statistics for December 2003 Pennsylvania, Social Security Administration (Feb. 2005) (TAB A). Retired workers in Pennsylvania received an average benefit of \$948 per month. See *id.* (TAB A).

Senator Rick Santorum (R-Penn.) is the Chairman of the Senate Finance Subcommittee on Social Security and Family Policy, which has jurisdiction over Social Security legislation. See Senate Finance Subcommittee Roster, The Congressional Directory or the 109th Congress (2005-2006), U.S. Government Printing Office, at 358 (TAB B).

RetireSafe.org gave Senator Santorum a 100-percent approval rating for 2003-2004 for supporting issues important to the organization. See Retire Safe Ratings, Project Vote Smart, available at [http://www.vote-smart.org/issue\\_rating\\_detail.php?sig\\_id=03502M](http://www.vote-smart.org/issue_rating_detail.php?sig_id=03502M) (TAB C). RetireSafe.org is a grassroots organization promoting

3  
2  
8

retirement security issues. *See id.* (TAB C).

United Seniors Association gave Senator Santorum a 100-percent rating for 1999 and 2000 for supporting issues important to the association. *See* Project Vote Smart, available at [http://www.vote-smart.org/issue\\_rating\\_detail.php?sig\\_id=001163M](http://www.vote-smart.org/issue_rating_detail.php?sig_id=001163M) (TAB D) and [http://www.vote-smart.org/issue\\_rating\\_detail.php?sig\\_id=001664W](http://www.vote-smart.org/issue_rating_detail.php?sig_id=001664W) (TAB E). United Seniors Association is a 1.5 million member non-profit organization that works to safeguard the Social Security Trust Fund. *See id.* (TABS D and E).



Script

Santorum sponsored legislation guaranteeing Americans 55 and older the Social Security they deserve.

Video

Film:

Close-up of grandfather's hand, which is holding his grandson's hand as they walk down a path in the park.

Graphic:

"Rick Santorum

[Sponsored Social Security Guarantee Act of 2005]

s.1750"

Support

On September 22, 2005, Senator Santorum introduced S. 1750, "The Social Security Guarantee Act of 2005." See S. 1750, 109th Cong., 151 CONG. REC. S10378 (Sept. 22, 2005) (TAB F). The legislation requires the Treasury Department to issue a certificate guaranteeing benefits and cost-of-living adjustments to each Social Security beneficiary born before 1950. See 151 CONG. REC. S10379-80 (Sept. 22, 2005) (TAB G).

Senator Santorum introduced similar legislation in 2001. See S. 1558, 107th Cong. (2001) (TAB H); 139 CONG. REC. S10769, S10773-74 (Oct. 16, 2001) (TAB I).

Script

Fighting to make sure Congress can't touch it in the future.

Video

Film:

Close-up of grandfather's hand, which is holding his grandson's hand as they walk down a path in the park.

Graphic:

"Rick Santorum

[Ensuring Social Security is there when we need it]"

Support

The Social Security Guarantee Act of 2005, S. 1750, 109th Cong. § 2(c) (2005), would enact an obligation by the Federal Government to provide Social Security benefit payments to beneficiaries born before 1950. See S. 1750 ("Any certificate issued under the authority of this section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to the individual to whom the certificate is issued benefits under title II of the Social Security Act (42 U.S.C. § 401 et seq.) in amounts in accordance with the guarantee set forth in the certificate.") (TAB J). The provision would "make it much harder for a future Congress to reduce retirees' benefits." See David C. John, *Guaranteeing Retirees' Social Security Benefits: An Important First Step Toward Reform*, HERITAGE FOUNDATION WEB MEMO, Sept. 27, 2005, at 1 (TAB K).

6  
12  
2

Script

Because seniors worked so hard to pay into it, Santorum's ensuring it's there when we need it.

Video

Film:

Grandfather places his hat on his grandson's head.

Graphic:

"Rick Santorum

[*Ensuring Social Security is there when we need it*]"

Support

Worker and employer contributions to the Old-Age and Survivors Insurance Trust Fund, which is the account of the Social Security Trust Fund that pays retirement and survivor benefits, have increased from \$765 million in 1937 to \$472.8 billion in 2004. *See* Old-Age and Survivors Insurance Trust Fund Receipts, Social Security Administration (Jan. 2005) (TAB L). According to the recent Social Security Administration statistics, over 1.5 million retired workers in the Commonwealth of Pennsylvania were Social Security beneficiaries in 2003. *See* Social Security Fact Sheet, Pennsylvania State Statistics, Social Security Administration (Mar. 2005) (TAB M).

Senator Santorum introduced S. 1750, The Social Security Guarantee Act of 2005, S. 1750, 109th Cong. § 2(c) (2005), which would enact an obligation by the Federal Government to provide Social Security benefit payments to beneficiaries born before 1950. *See supra* "Support" at 6 (TABS J and K).

7 2 8

Script

Call and say thanks.

Rick Santorum's the one getting it done.

Video

Film:

Grandfather places his hat on his grandson's head.

Support

No support needed.

Graphic:

"Senator Rick Santorum

(412) 562-0533

[Getting It Done]

Americans for Job Security Logo

PAID FOR BY AMERICANS FOR JOB SECURITY"

8 2 8

2006 POLITICAL ADS: PENNSYLVANIA SENATE

**Americans For Job Security: "Serious Times"**

Published Wednesday, April 5, 2006

Producer: Alfano-Leonardo  
Communications Inc.

Running Time: 0:30

Debut Date: April 4, 2006

Ad Buy: broadcast channels in  
Philadelphia and Harrisburg;  
statewide on cable

Cost: \$500,000

Summary: The ad asks viewers:  
"Can [Pennsylvanians] really count  
on Bob Casey to be there for us  
when it matters most?"

- [More About This Ad](#)
- [More Ads From This Race](#)

*To access the ad, you will need a current version of RealPlayer™,  
which is available for free from the [Progressive Networks](#) Web site.*

Script of "Serious Times" (TV)

**ANNOUNCER** [v/o]: These are serious times that call for serious leadership.

Yet, as treasurer, Bob Casey has skipped work more than 43 percent of the time.

*(Text on screen: Philadelphia Inquirer, Feb. 13, 2006)*

In fact, just three months after being sworn in as treasurer, Bob Casey was already skipping work to look for another job.

*(Text on screen: Skipped 91.5 of 211 days)*

With a record like that can we really count on Bob Casey to be there for us when it matters most?

Call Bob Casey, tell him we need serious leaders in serious times.

*(Text on screen: 717-787-2465; Paid For By Americans For Job Security)*

[ Ad Spotlight Main Page ]

**Need A Reprint?**

National Journal Group offers both print and electronic reprint services, as well as permissions for academic use, photocopying and republication. Click here to order, or call us at 877-394-7350.

3  
of 1

10044273693

2006 POLITICAL ADS: PENNSYLVANIA SENATE

**Americans For Job Security: "Dedication"**

Published Monday, June 5, 2006

Producer: Alfano-Leonardo  
Communications Inc.

Running Time: 0:30

Debut Date: June 3, 2006

Ad Buy: statewide on cable;  
broadcast in Pittsburgh

Cost: between \$125,000 and  
\$150,000

Summary: An announcer outlines  
the time Bob Casey has spent  
campaigning rather than working in  
his current job as state treasurer.

- [More About This Ad](#)
- [More Ads From This Race](#)

To access the ad, you will need a current version of RealPlayer™,  
which is available for free from the [Progressive Networks](#) Web site.

**Script of "Dedication" (TV)**

**ANNOUNCER** [v/o]: Doing a good job requires dedication. Yet as treasurer, Bob Casey has skipped work more than 43 percent of the time.

*(Text on screen: Source: The Philadelphia Inquirer, Feb. 13, 2006)*

In fact, just three months after being sworn in as treasurer, Bob Casey was already skipping work to look for another job.

*(Text on screen: Skipped 91.5 of 211 days)*

If you miss that much work, would you keep your job?

Call Bob Casey and tell him we expect an honest day's work for an honest day's pay.

*(Text on screen: 717-787-2465; Paid For By Americans For Job Security)*

[ Ad Spotlight Main Page ]

**Need A Reprint?**

National Journal Group offers both print and electronic reprint services, as well as permissions for academic use, photocopying and republication. Click here to order, or call us at 877-394-7350.

ADVERTISEMENT